

**SOUTH DAKOTA DEPARTMENT OF HUMAN SERVICES
TRADING PARTNER AGREEMENT**

Submitter Name:	State of South Dakota
Submitter Address:	Department of Human Services
	Hillsvieview Plaza
	c/o 500 East Capitol Avenue
	Pierre, SD 57501

Referred to as “Trading Partner”

Referred to as “DHS”

I. Purpose of Trading Partner Agreement

This agreement for the exchange of electronic health information is entered into by and between the “Trading Partner” and the South Dakota Department of Human Services “DHS”.

In order to secure data that reside in the DHS files, and data maintained by the Trading Partner for purpose of treatment or care management of DHS recipients, and in order to ensure the integrity, security, and confidentiality of the aforesaid data, and to permit appropriate disclosure and use of such data as permitted by law, the DHS and the trading partner enter into this agreement to address the conditions under which data will be exchanged for the purpose of coordinating payment between the DHS and the Trading Partner.

This Agreement indicates the trading partner intends to conduct transactions with DHS in electronic form. Both parties acknowledge and agree that the privacy and security of data held by or exchanged between them is of utmost priority. Each party agrees to take all steps reasonably necessary to ensure that all electronic transactions between them conform to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder. The Trading Partner must require any entity with whom it contracts, and any subcontractors thereof, to comply with all applicable requirements and terms of the Agreement. The Trading Partner will obtain satisfactory assurance and documentation of the satisfactory assurance, as required under 45 CFR 164.502 (e), from any entity with whom it contracts, and any subcontractors thereof, (e.g., clearinghouse, third-party administrator, administrative service only contract, billing service, data transmission service, or network service vendor) that it will appropriately safeguard the protected health information covered by this Agreement.

II. Definitions

For the purpose of this Agreement:

The term ‘(DHS)’, mean the Department of Human Services.

The terms ‘Trading Partner’ and ‘Submitter’ mean the entity or contractor thereof that provides health care services for eligible DHS recipients.

III. TERMS AND CONDITIONS

The parties agree to as follows:

1. Each party will take reasonable care to ensure that the information submitted in each electronic transaction is timely, complete, accurate, and secure, and will take reasonable precautions to prevent unauthorized access to (a) its own and the other party's transmission and processing systems, (b) the transmissions themselves, and (c) the control structure applied to transmissions between them.
2. Each party is responsible for all costs, charges, or fees it may incur by transmitting electronic transactions to, or receiving electronic transactions from, the other party.
3. The Trading Partner will conform each electronic transaction submitted to the DHS to the Implementation Guide and Addendum applicable to the transaction, and to the applicable South Dakota Companion Guide. The Trading Partner understands that there may be modifications to the Implementation Guide and Addendum and the Companion Guide at any time without amendment to this Trading Partner Agreement, but the Trading Partner shall not be required to implement such modifications sooner than 60 days after publication of the modified Implementation Guide and Addendum or Companion Guide, unless a shorter compliance period is necessary to conform to applicable federal law or regulation. Only the last-issued Implementation Guide and Addendum of each type will be effective as of the date specified in the Implementation Guide and Addendum. The DHS may reject any transaction that does not conform to the applicable Implementation Guide and Addendum and the Companion Guide.
4. The Submitter understands that the DHS or others may request an exception from the Transaction and Code Set Regulations from the DHHS (Department of Health and Human Services). If an exception is granted, the Submitter will participate fully with the DHS in the testing, verification, and implementation of a modification to a transaction affected by the change.
5. The Trading Partner understands that the DHHS may modify the transaction and Code Set Regulations. The Trading Partner will modify, test, verify, and implement all modifications or changes required by the DHHS using a schedule mutually agreed upon by the Submitter and the DHS.
6. The Submitter understands that it is responsible for following the DHS Companion Guide as for data elements and segments, and that extra data or that data that are not X12-compliant are disallowed.
7. Before initiating any transmission in HIPAA standard transaction format, and thereafter throughout the term of this Agreement, the Trading Partner will cooperate with the DHS and any DHS Business Associates (i.e., vendors who perform certain functions on the DHS's behalf) in such testing of the transmission and processing systems used in connection with the DHS as the DHS deems appropriate to ensure the accuracy, timeliness, completeness, and security of each data transmission.

IIIa. Privacy and Use of Information

The individually identifiable health information described in this Agreement is being furnished by the Trading Partner and DHS for use in the electronic submission and adjudication of claims for programs administered by the DHS. The recipient-specific information is confidential and subject to the provision of 5 USC 552a (i) (3) under the Privacy Act of 1974. Furthermore the privacy rule under HIPAA (Standards for Privacy of Individually Identifiable Health Information) applies to all health plans, health care clearinghouses, and health care providers that transmit protected health information in electronic transactions. To assure that no records held confidential under the Privacy Act of 1974 and/or the HIPAA privacy rule are improperly used or disclosed, the DHS and the Trading Partner agree that any information furnished by the other party will be used only as authorized under the terms and conditions of this Agreement and may not be further disclosed. No party shall be permitted to disclose or use information that is of a proprietary nature, except as permitted by the terms of the Agreement.

The Trading Partner agrees to the following conditions:

1. That each individual on whom the information is being provided is one for whom the State provides medical assistance benefits, with the exception of eligibility inquiries or instances in which the Submitter has reason to believe the individual is DHS eligible;
2. That it will safeguard the confidentiality and prevent unauthorized access to the DHS data; and
3. That DHS retains all ownership rights to the data, and that the Trading Partner does not obtain any right, title, or interest in any of the data furnished by DHS.

DHS agrees that it shall maintain the confidential nature of all non-public personal information obtained from the Trading Partner on behalf of the DHS recipients. The Trading Partner, CMS (Centers for Medicare and DHS Services), and the DHS shall establish appropriate administrative, technical, procedural, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized use or access to the data. The safeguards should provide a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III – Security of Federal Automated Information Systems, which sets forth the guidelines for security plans for automated information systems in Federal agencies. The Trading Partner agrees to the establishment of the following procedures:

- Limit access to the data to only those employees, agents, and officials who need it to perform their duties in connection with the authorized use;
- Store and process the data in such a manner that unauthorized persons cannot retrieve information by any means, including computers, remote terminals, or other means; and
- Instruct all personnel and agents who will have access to the data regarding the confidential nature of the information, the safeguards required, and the criminal sanctions.

Web-based training and other non-classroom alternatives are acceptable means for providing this instruction.

The Trading Partner agrees that in the event the DHS or CMS determine or has a reasonable belief that the Trading Partner has made or may have made disclosure of the DHS data that is not authorized by this

Agreement or other written CMS or DHS authorization, the DHS may, at its sole discretion, require the Trading Partner to:

- Promptly investigate and report to the DHS the Trading Partner's determinations regarding any alleged or actual unauthorized disclosure, and
- Promptly resolve any problems identified by the investigation, submit a formal written response to an allegation of unauthorized disclosure, and submit a corrective action plan with steps designed to prevent any future unauthorized disclosures, and/or return data files to DHS.

The Trading Partner understands that as a result of DHS's determination or reasonable belief that unauthorized disclosure(s) has or have taken place, the DHS may refuse to release further data to the Trading Partner, report the unauthorized disclosure(s) to the proper government authority, and terminate this Agreement.

If the Trading Partner wishes to use the data provided by DHS under this Agreement for any purposes other than those outlined in this Agreement, the Trading Partner shall make a written request to DHS, in Pierre, outlining the additional purpose for which it seeks to use the data. If DHS determines that the Trading Partner's request to use the data provided hereunder is acceptable, DHS will provide written approval to the Trading Partner for the additional proposed use of the data. The DHS contact information for this purpose or other inquiry is provided in Attachment III to this document.

IIIb. Penalties for Unapproved Use of Disclosure of Data

The Trading Partner hereby acknowledges that criminal penalties under 1106 of the Social Security Act (42 USC 1306 (a)) may apply to disclosures of information that are covered by 1106 and that are not authorized by regulation.

The Trading Partner acknowledges that criminal penalties under the Privacy Act (5 USC 552a (I) (3)) may apply if it is determined that the Trading Partner, or any individual employed or affiliated therewith, knowingly and willfully obtained the individually identifiable data under false pretenses.

The Trading Partner acknowledges that criminal penalties may be imposed under 18 USC 641 if it is determined that the Trading Partner, or any individual employed or affiliated therewith, has taken or converted to its own use data files, or received the files knowing that they were stolen or converted.

The Trading Partner acknowledges that civil and criminal penalties under HIPAA (Public Law 104-191) may apply if it is determined that a person wrongfully disclosed individually identifiable health information.

IIIc. Limitation of Liability

The Trading Partner shall use reasonable efforts to assure that the information, data, electronic files and documents supplied hereunder are accurate. However, the DHS shall not be liable to the Trading Partner or any other party for any damages or expenses, including, without limitation, direct or indirect, special, incidental, consequential or punitive damages, court costs, and attorney fees or for damages in any amount

incurred as a result of inaccuracies in any of the information, data, electronic files, or documents supplied hereunder.

Any notice and informational mail pertaining to this Agreement from either party to this Agreement shall be given in writing and mailed to the appropriate parties identified in Attachment III and shall be deemed duly given when personally delivered or sent by overnight carrier or by certified mail, return receipt requested, postage prepaid. If either party to this Agreement changes its address during the term of this Agreement, that party shall provide notice of such change of address to the other party, pursuant to this paragraph and as required in the DHS provider enrollment agreement. In addition, notices and informational mail pertaining to the Agreement may be conveyed via e-mail or other electronic notice if both parties agree to the use of this medium. Such notices are deemed as given based on the date of receipt within the electronic system used by the receiving party.

IV. Terms of Agreement

This Agreement may not be assigned and duties hereunder may not be delegated.

This Agreement, together with the Attachments, constitutes the whole agreement between the Trading partner and the DHS and shall not be altered or varied by oral understanding or agreement or by any other means not contemplated herein.

This Agreement shall be effective upon the date of its execution by the DHS and the DHS and shall automatically renew it for successive periods of 1 year, unless superseded or terminated.

Either the Trading Partner or the DHS may terminate this Agreement by giving at least sixty (60) calendar day advance written notice to the other Party. The provision of Section IIIa shall survive the expiration, cancellation, or termination of this Agreement.

Any notice of other communication required under this agreement shall be in writing and sent to the address set forth above.

DHS Authorized Signature
Dan Lusk, Director of Budget and Finance

Title

Signed this _____ day of _____, 20__

Trading Partner Authorized Signature

Title

Signed this _____ day of _____, 20__

Printed Name

Telephone Number

E-mail Address

Attachment 1

State of South Dakota Department of Human Services DHS Trading Partner Agreement

Trading Partner Name (please print)

Submitter ID No.

If the applicant does not have a Submitter ID # the Submitter Information section of this Agreement must be completed to enable the DHS to assign a DHS Submitter ID #. The Trading Partner Certification process cannot be completed until that number is assigned. The DHS will notify the applicant when a DHS Submitter ID # is obtained and the certification process may commence.

The Trading Partner intends to conduct transactions with DHS in an electronic medium. Both parties acknowledge and agree that the privacy and security of data held by or exchanged between them is of utmost priority. Each party agrees to take all steps reasonably necessary to ensure that all electronic transactions between them conform to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated thereunder. Without limiting the generality of the preceding sentence, the parties agree as follows:

1. Electronic Transactions Requested

Transactions Trading Partner Intends to Submit/Receive	Check All Transactions Requested
837 Professional Claims/Encounter	
837 Dental Claims/Encounter	
837 Institutional Claims/Encounter	
NCPDP 5.1+/1.1 transactions (Pharmacy Providers Only)	
835 Health Care Claim Payment Advice	
270/271 Health Care Eligibility Benefit Inquiry/Response	
278 Health Care Services Request for Review and Response	
277/276 Claim Status Request/Response	
<i>The Following Transactions are only available to Managed Care Organizations</i>	
820 Capitation Payment	
834 Benefit Enrollment and Maintenance	

2. Trading Partners must be certified for each transaction requested. Please indicate any pre-certification your agency has obtained.

Pre-Certification	Agency of Product Name
Certified by Independent Agency	
Translator Compliance Check	
Utilizing Certified Vendor/Clearing House	
Other (Describe)	

3. Each party is solely responsible for the preservation, privacy, and security of data in its possession, including data in transmissions received from the other party and other persons. If either party receives

from the other, data not intended for it, the receiving party will immediately notify the sender to arrange for its return, re-transmission, or destruction, as the other party directs.

4. Termination or expiration of this Agreement or any other contract between the parties does not relieve either party of its obligations under this Agreement and under federal and state laws and regulations pertaining to the privacy and security of Individually Identifiable Health Information nor its obligations regarding the confidentiality of proprietary information.
5. The Trading Partner may authorize one or more intermediaries to electronically send or receive data on its behalf. Every such intermediary must first be bound by written agreement with the Trading Partner to comply with applicable law and regulations, with the current applicable HIPAA Implementation Guides and Addenda and South Dakota DHS Companion Guides, and with the terms of this Agreement. The Trading Partner agrees and represents that it will disclose its provider number, Submitter ID number, password, and any other means that enable data to be transmitted to or received from DHS, only to intermediaries with whom it has such agreements, or to members of its workforce, whom the Trading Partner has authorized to receive and transmit data on its behalf. The Trading Partner will be bound by and responsible for the acts and omissions of all such persons in the exchange of electronic data with DHS. The Trading Partner shall notify DHS of any event, such as the termination of its relationship with a previously authorized employee or intermediary, that may require action to foreclose submission and receipt of transactions by persons no longer authorized by the Trading Partner to act on its behalf. Use of an intermediary shall not relieve the Trading Partner of any risks or obligations assumed by it under this or any other agreement with DHS, or under applicable law and regulations. The Trading Partner will bear all costs resulting from its use of intermediaries.

Neither the Submitter nor the DHS accepts responsibility for technical or operational difficulties that arise out of third-party service providers' business obligations and requirements that undermine transaction exchange between the Trading Partner and the DHS.

6. The Trading Partner agrees to notify the DHS when its relationship with a DHS provider terminates or a new DHS provider is added (a provider for whom the Trading Partner intends to submit transactions). *If the Trading Partner is a DHS provider submitting claims only for itself, the Name and DHS ID # must be entered here.*

DHS Provider Name <i>Attach additional page if necessary</i>	Provider TAX ID Number

DHS Provider Name <i>Attach additional page if necessary</i>	Provider TAX ID Number

7. This Agreement shall take effect and be binding on the Trading Partner and the DHS when received from the Trading Partner and executed by the DHS. This Trading Partner Agreement does not replace or preclude any existing agreements between the State of South Dakota DHS Program and the Trading Partner. Nothing in this Trading Partner Agreement may be construed to preclude the provider's responsibilities as outlined in these agreements. In case of conflict between this Agreement and any prior contracts between the parties, including prior versions of this Agreement, this Agreement will prevail, with the exception of the DHS Provider Agreement completed at time of enrollment into the South Dakota DHS Program.
8. The DHS may publish data clarifications in the DHS Companion Guide to complement each Implementation Guide. The Submitter should use DHS Companion Guides in conjunction with the HIPAA Implementation Guides available.

Transactions are considered properly received only after accessibility is established at the designated machine of the receiving party. Once transmissions are properly received, the receiving party will promptly transmit an electronic acknowledgement that conclusively constitutes evidence of properly received transactions. Each party will subject information to a virus check before transmission to the other party.

For hardcopy execution, the Submitter will sign two copies of this Agreement and mail it to the DHS at the address indicated on Page 1. The DHS will return one copy of the fully executed Agreement to the Submitter. The effective date of the hardcopy Agreement is the date on which the Agreement is signed by the DHS.

Attachment II - Submitter Information Section

Name of Submitter Organization: _____ **Phone #:** _____

Role of Submitter: (e.g., Billing Agent, Clearinghouse, DHS Provider, etc.) : _____

FEIN or SSN: _____ **Fax #:** _____

Name of Contact Person: _____ **E-mail Address:** _____

Physical Location: _____
No. & Street (P.O. Box not accepted)

City State Zip Code

Mailing Address: _____
Offical correspondence will be sent to this address

City State Zip Code

Attachment III – Department of Human Services contact information:

Contact for General Information:

Brenda Tidball-Zeltinger (DHS)

Phone: (605) 773-5990

Email: Brenda.Tidball-Zeltinger@state.sd.us

Attachment IV – Trading Partner Electronic Submission Certification Process

Contact Don Miller to complete the testing/certification process. Once you have completed a successful test DHS will sign and return an original copy of this agreement to you.

Contact for Technical Information:

Don Miller (BIT)

Phone: (605) 773-3267

email: Don.Miller@state.sd.us